



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[EPA-HQ-OW-2009-0596; FRL-9670-7]

RIN 2040-AF41

Effective Date for the Water Quality Standards for the State of Florida's Lakes and Flowing Waters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed delay of effective date.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to extend the July 6, 2012, effective date of the “Water Quality Standards for the State of Florida’s Lakes and Flowing Waters; Final Rule” (inland waters rule) for three months to October 6, 2012. EPA also is soliciting comment on extending the July 6, 2012, effective date by one year to July 6, 2013. EPA’s inland waters rule as promulgated on December 6, 2010, included an effective date of March 6, 2012, for the entire regulation except for the site-specific alternative criteria provision, which took effect on February 4, 2011. This proposal to extend the July 6, 2012, effective date for the inland waters rule does not affect or change the February 4, 2011, effective date for the site-specific alternative criteria provision. On March 5, 2012, EPA extended the March 6, 2012, effective date to July 6, 2012. In this proposal, EPA is requesting comment on extending the effective date for the “Water Quality Standards for the State of Florida’s Lakes and Flowing

Waters; Final Rule” from July 6, 2012 to October 6, 2012, or in the alternative from July 6, 2012 to July 6, 2013.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OW-2009-0596, by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
2. E-mail: ow-docket@epa.gov.
3. Mail to: Water Docket, U.S. Environmental Protection Agency, Mail code: 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention: Docket ID No. EPA-HQ-OW-2009-0596.
4. Hand Delivery: EPA Docket Center, EPA West Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004, Attention Docket ID No. EPA-HQ-OW-2009-0596. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OW-2009-0596. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through

<http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.regulations.gov> to view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. For additional information about EPA's public docket, visit EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information with disclosure restricted by statute. Certain other material, such as copyright material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Docket Facility. The Office of Water (OW) Docket

Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

The OW Docket Center telephone number is 202–566–1744, and the Docket address is OW Docket, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: For information concerning this rulemaking, contact: Tracy Bone, U.S. EPA, Office of Water, Mailcode 4305T, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460; telephone number 202-564-5257; email address: bone.tracy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

Does this Action Apply to Me?

Citizens concerned with water quality in Florida may be interested in this rulemaking. Entities discharging nitrogen or phosphorus to lakes and flowing waters of Florida could be indirectly affected by this rulemaking because water quality standards (WQS) are used in determining National Pollutant Discharge Elimination System (NPDES) permit limits. Categories and entities that may ultimately be affected include:

Category	Examples of potentially affected entities
Industry	Industries discharging pollutants to lakes and flowing waters in the State of Florida.
Municipalities	Publicly-owned treatment works discharging

	pollutants to lakes and flowing waters in the State of Florida.
Stormwater Management Districts	Entities responsible for managing stormwater runoff in Florida.

This table is not intended to be exhaustive, but rather provides a guide for entities that may be directly or indirectly affected by this action. This table lists the types of entities which EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table, such as nonpoint source contributors to nitrogen/phosphorus pollution in Florida's waters may be affected through implementation of Florida's water quality standards program (i.e., through Basin Management Action Plans (BMAPs)). Any parties or entities conducting activities within watersheds of the Florida waters covered by this rule, or who rely on, depend upon, influence, or contribute to the water quality of the lakes and flowing waters of Florida, may be affected by this rule. To determine whether your facility or activities may be affected by this action, you should carefully examine the language in 40 CFR 131.43, which is the final rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding FOR FURTHER INFORMATION CONTACT section.

II. Background

On December 6, 2010, EPA's final inland waters rule, entitled "Water Quality Standards for the State of Florida's Lakes and Flowing Waters; Final Rule," was published in the **Federal Register** at 75 FR 75762, and codified at 40 CFR 131.43. The final inland waters rule established numeric nutrient criteria in the form of total nitrogen, total phosphorus, nitrate+nitrite, and chlorophyll a for the different types of Florida's inland waters to assure

attainment of the State's applicable water quality designated uses. More specifically, the numeric nutrient criteria translate Florida's narrative nutrient provision at Subsection 62-302-530(47)(b), Florida Administrative Code (F.A.C.), into numeric values that apply to lakes and springs throughout Florida and flowing waters outside of the South Florida Region. (EPA has distinguished the South Florida Region as those areas south of Lake Okeechobee and the Caloosahatchee River watershed to the west of Lake Okeechobee and the St. Lucie watershed to the east of Lake Okeechobee.) The December 2010 final action seeks to improve water quality, protect public health and aquatic life, and achieve the long-term recreational uses of Florida's waters, which are a critical part of the State's economy.

As stated in 75 FR 75807 (December 6, 2010), the rule was scheduled to take effect on March 6, 2012, except for the site-specific alternative criteria (SSAC) provision at 40 CFR 131.43(e), which took effect on February 4, 2011. EPA selected the March 6, 2012, effective date for the criteria part of the rule to allow time for EPA to work with stakeholders and the Florida Department of Environmental Protection (FDEP) on important implementation issues; to help the public and all affected parties better understand the final criteria and the basis for those criteria; and for EPA to engage and support, in full partnership with FDEP, the general public, stakeholders, local governments, and sectors of the regulated community across the State in a process of public outreach education, discussion, and constructive planning, (75 FR 75787, December 6, 2010).

On December 22, 2011 (76 FR 79604), EPA proposed to extend the March 6, 2012, effective date of the inland waters rule to June 4, 2012. EPA received six comments on its proposal. EPA considered the public comments and the continued progress by the FDEP toward adoption of

nutrient water quality standards. EPA decided that a four month extension was warranted (77 FR 13497), and thus extended the effective date of the inland waters rule to July 6, 2012.

III. Proposed Extension of July 6, 2012 Effective Date

A. Current Inland Waters Rule Effective Date and Rationale

The current effective date for the inland waters rule is July 6, 2012 except, as noted earlier, for the site-specific alternative criteria (SSAC) provision, which became effective February 4, 2011.

As discussed at length in the December 22, 2011, proposal to extend the effective date of the inland waters rule (76 FR 79604), EPA at both the Headquarters and Regional levels has worked in collaboration with the State on outreach and education efforts. In the same proposal, EPA also discussed that a further extension of the effective date of the inland waters rule might be needed to allow FDEP to submit the recently established State numeric nutrient rules to EPA for review and action under section 303(c) of the CWA, for EPA to complete its review of the State rules, and for EPA to withdraw any Federal numeric nutrient criteria corresponding to any State-adopted numeric nutrient criteria that have been approved by EPA.

B. Rationale for Extending the July 6, 2012 Effective Date

EPA is proposing to extend the effective date of the inland waters rule (with the exception of the SSAC provision, which is already in effect) for three months to October 6, 2012 for the reasons discussed in this section. EPA also requests comment on the possibility of extending the July 6, 2012 effective date for one year to July 6, 2013 or further.

Since the promulgation of the December 6, 2010 final rule for Florida's inland waters, EPA has continued to work in close coordination with the State of Florida as the State develops its own rulemaking for numeric nutrient criteria (NNC rules) that are consistent with requirements of the Clean Water Act (CWA), address the water quality needs of the State, and support effective permit implementation, water body assessment and listing, and development of TMDLs. The State legislature has exempted the state NNC rules from legislative ratification and directed the FDEP to submit the rules to the EPA for review. On February 20, 2012, the FDEP sent the rules to EPA, which sets numeric nutrient criteria for lakes, spring vents, streams, and certain estuaries in Florida. The FDEP also submitted material supporting those criteria. EPA looks forward to receiving notification from the State of Florida that the rules have been officially adopted as revisions to the State's water quality standards.

A petition was filed with the Florida Department of Administrative Hearings challenging the validity of FDEP's NNC rules. A hearing was held the week of February 27, 2012, and the Administrative Law Judge has not yet issued an order in the case. EPA anticipates that the judge will issue a ruling in May. At the time of this proposal, the outcome of the administrative challenge is uncertain. The three month extension of the effective date of the inland waters rule would allow time for the administrative challenge to be resolved, and, if FDEP prevails, for FDEP to notify EPA that the NNC rules have been officially adopted as revisions to the State's water quality standards. If EPA were to approve Florida's rules, EPA would then consider proposing and finalizing an additional extension to allow time for EPA to withdraw any Federal numeric nutrient criteria that correspond to criteria that have been adopted by Florida and approved by EPA.

Final State numeric nutrient criteria could have significant implications for many interested parties and members of the public in the State. In the event that alternative Florida numeric nutrient criteria are established that assure attainment of State designated uses consistent with applicable CWA provisions, there could be uncertainty regarding implementation of EPA's inland water numeric criteria. Successful State action on this issue could also affect the obligations and expectations of a wide range of affected stakeholders whose actions relate to the discharge or contribution of nitrogen and phosphorus pollution to State waters. Extending the effective date of EPA's inland waters rule from July 6, 2012, to October 6, 2012, would avoid the confusion and inefficiency that could occur should Federal criteria become effective while EPA reviews State criteria for approval or disapproval under CWA section 303(c). Further, extending the effective date to July 6, 2013, would avoid the confusion and inefficiency that could occur should Federal criteria take effect after State criteria have been approved and while EPA is in the process of withdrawing Federal criteria for corresponding waters.

Should EPA decide to extend the effective date of the inland waters rule, the Agency will continue to work with Florida towards implementation of either Federal or State numeric nutrient criteria. As EPA stated in the preamble to the final inland waters rule, the opportunity presented by numeric nutrient criteria -- for substantial nitrogen and phosphorus loadings reductions in the State -- "would be greatly facilitated and expedited by strongly coordinated and well-informed stakeholder engagement, planning, and support before a rule of this significance and broad scope begins to take effect and be implemented through the State's regulatory programs" (75 FR 75787, December 6, 2010).

EPA solicits comments regarding the proposed extension of three months to October 6, 2012, for the effective date of the inland waters rule, as well as a proposed extension of one year to July 6, 2013, for the same.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993), since it merely extends the effective date of an already promulgated rule, and is, therefore, not subject to review under Executive Order 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This action does not impose any information collection burden, reporting or record keeping requirements on anyone.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this action on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR

121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

This proposed rule does not establish any requirements that are applicable to small entities, but rather merely extends the date of already promulgated requirements. Thus, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for State, local, or tribal governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. This action merely extends the effective date of an already promulgated regulation. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

E. Executive Order 13132 (Federalism)

This action does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action merely extends the effective date of an already promulgated regulation.

F. Executive Order 13175

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). In the State of Florida, there are two Indian Tribes, the Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida, with lakes and flowing waters. Both Tribes have been approved for treatment in the same manner as a State (TAS) status for CWA sections 303 and 401 and have federally-approved WQS in their respective jurisdictions. These Tribes are not subject to this proposed rule. This rule will not impact the Tribes because it merely extends the date of already promulgated requirements. Thus, Executive Order 13175 does not apply to this action.

EPA specifically solicits additional comment on this proposed action from tribal officials.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866 and because the Agency does not believe this action includes environmental health risks or safety risks that would present a risk to children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards

(e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

Executive Order (E.O.) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. This proposed action is not subject to E.O. 12898 because this action merely extends the effective date for already promulgated requirements.

List of Subjects in 40 CFR Part 131

Environmental protection, Water quality standards, Nitrogen/phosphorus pollution, Nutrients, Florida.

Dated: May 5, 2012

Lisa P. Jackson,
Administrator.

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